IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.
CRIMINAL REVISION APPLICATION No.188 of 2007.

Uttamchand Sawalchand Jain ..Applicant.

Vs.

The State of Maharashtra and Ors. ..Respondents.

Mr S. V.Marwadi i/b Santosh Chari & Chetan Bane for the applicant.

Mr Shekhar Bhise, Advocate for Respondent No.1.

Mr K. V. Saste, A.P.P. for the Respondent No.2.

CORAM: V.C. DAGA,J.
DATED: 6TH JULY, 2007.

P.C.:-

1. Heard rival parties.

2. Perused application.

3. This revision is directed against the order dated 15.3.2007 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Gr.Mumbai in Criminal Revision Application No. 259 of 2007 which was directed against the order passed by the Additional Chief Metropolitan Magistrate's 4th Court, Girgaum, Mumbai (for short "Trial Court)under Section 145 (1) of the Code of

Criminal Procedure (Cr.P.C.) directing the applicant to remain present before the Court and to file written statement of his claim in respect of the actual possession of the property in dispute.

4. Facts giving rise to the present revision application, in nutshell, are :

. The applicant had filed a Petition being Notice No. 127/Misc/2006 before the Trial Court under the provisions of Section 145 (1) of the Cr.P.C.

5. The learned Trial Court after hearing the applicant on the aforesaid Notice was pleased to pass the order under the provisions of sub Section (1) of Section 145 of the Cr.P.C. reading as under:

> The respondent is directed to attend in person or through an Advocate on 21.2.2007 at 11.00 a.m. before this Court and to put in written statement of his claim as respects the fact of actual possession of the subject of dispute subject of this case.
>
> The copy of this order be served upon the respondent.
>
> The copy of this order shall be published by being affixed to some conspicuous place at or the near subject

of dispute.

Returnable on 21.2.2007.

6. Being aggrieved by the aforesaid order dated 3.1.2007 passed by the Trial Court under section 145 (1) of the Cr.P.C. the applicant preferred Revision before the learned Sessions Court of Greater Mumbai being Revision Application No. 259 of 2007.

7. The learned Sessions Judge after hearing the parties set aside the order dated 3.1.2007 passed by the Trial Court holding that the order is very cryptic and that no reasons were to be found in the order about the existence of breach of peace. In nutshell, revision was allowed and the order dated 3.1.2007 came to be set aside.

8. Being aggrieved by the aforesaid order, the applicant has invoked revisional jurisdiction of this Court.

9. Mr Marwadi, learned counsel for the applicant urged that revision filed before the learned Sessions Judge itself was not maintainable since the order dated 3.1.2007

was interlocutory order. He further urged that for the Trial Court it was not necessary to record reasons for issuing notice to the respondents. He placed reliance on the judgment of the Apex Court in the case of **R.H. Bhutani v. Miss Mani J. Desai, A.I.R. 1968 S.C. 1444** in support of his submission.

10. Per contra, learned counsel appearing for the respondent submits that recording of satisfaction with the reasons is a condition precedent for assumption of jurisdiction under Section 145 of the Cr.P.C. He placed reliance on the judgment of this Court in the case of **Vishwanath Kashinath Virkar and others v. Nitinchand Keshavji Gala and others 1995 (3) Bom. C.R. 525.** He also while reiterating his submission relied on the judgment of Karnataka High Court in the case of **Shankarlal v. Alhaz Khaja Abdul Hasan and another, 1991 Cri.L.J. 1556** and **Anand Ram Nanda v. The State, 1986 Cr.L.J.2008.**

11. Having heard the rival parties, it is not necessary to go to the merits of the matter since the applicant is entitled to succeed on the first contention raised by Mr

Marwadi, learned counsel appearing for the applicant. The perusal of the order dated 3.1.2007 would unequivocally goes to show that the said order was interim order. This order was passed before evidence or statement had been recorded. Further proceedings were to be taken up and further orders were to be passed only on the basis of contentions of the parties. All that happened on 3.1.2007 was nothing but notice to the respondent to appear and file his written statement so as to enable the Trial Court to take up further proceedings. In this view of the matter, the revision application filed by the respondent before the learned Sessions Court, Greater Mumbai was not maintainable. The law in this behalf is absolutely settled. However, by way of ready reference one can always refer to the judgment of the Apex Court in this behalf in the case of **Amresh Tiwari v. Lata Prasad Dubey, A.I.R. 2000 S.C. 1504**. In that case while considering the order initiating proceeding under Section 145 of the Code was treated as a interim order. In this view of the matter, revision filed by the respondent no.1 was itself not maintainable. On this short ground, impugned order is liable to be

quashed and set aside. Since impugned order is being set aside on the ground of maintainability of the revision, it is not necessary to deal with further contentions in the matter.

12. In the result, impugned order is quashed and set aside. Proceeding under Section 145 (1) of the Code initiated by the Trial Court vide C.C. No. 127/Misc/2006 is restored to file. The parties are directed to appear before the Trial Court namely Additional Chief Metropolitan Magistrate, 4th Court, Girgaon, Mumbai on 30.7.2007 and the said Court is directed to decide proceedings as expeditiously as possible, at any rate within three months from the date of receipt of copy of this order.

(V.C. DAGA,J.)